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In re Application of :
Clark Robert Smith :
Serial No. 08/218,920 : DECISION ON PETITION
Filed: March 28, 1994 :
Docket NO.: A-58278-1/MAK :

This is a decision on the petition filed August 5, 1994, which is construed as requesting that the above-identified application be treated as a regular continuation-in-part application under 35 U.S.C. 111 and 37 CFR 1.53(b), and be accorded a filing date of March 28, 1994.

On April 18, 1994, Application Division mailed a Notice To File Missing Parts Of Application stating that a copy of a signed declaration, and large entity fees of \$710.00 for the statutory basic filing fee were missing and requiring submission of the missing items together with a surcharge. Additional claim fees of \$184.00 (large entity), or the cancellation of the additional claims, and a \$130.00 surcharge (large entity) were also required.

In response, on May 16, 1994, an executed combined declaration and power of attorney, a verified statement claiming small entity status, \$355.00 for the basic filing fee, \$72.00 for additional claim fees, and a \$65.00 surcharge fee were submitted.

On August 5, 1993, in response to a telephone conference between Examiner Kratz and Mr. Kaufman, a petition to convert the present application to one filed under 37 CFR 1.53 was filed together with an authorization to charge the requisite \$130.00 petition fee to counsel's deposit account. See 37 CFR 1.182.

The petition is construed as requesting that the application be converted from an application filed under 37 CFR 1.60 to an application filed under 35 USC 111 and 37 CFR 1.53(b).

A review of the record reveals that the transmittal letter submitted with the application included a request for a continuation-in-part application under 37 CFR 1.60. However, a C-I-P application can only be filed under 37 CFR 1.53 and 1.62, not under 37 CFR 1.60 as requested. On petition, however, the

application as filed March 28, 1994, may be considered as a continuation-in-part application under 37 CFR 1.53.

The petition is granted.

Receipt of the Information Disclosure Statement filed July 5, 1994, is acknowledged.

The application is being forwarded to the Office of Finance for charging the \$130.00 petition fee to Deposit Account No. 06-1300.

Thereafter, the application will be returned to Application Division for further processing as a regular continuation-in-part application, under 35 USC 111 and 37 CFR 1.53, not an application under 37 CFR 1.60, with a filing date of March 28, 1994, using the declaration filed May 16, 1994.



J. Michael Thesz
Special Program Examiner
Office of Special Programs
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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